DOCUMENT RESUME

ED 329 363 PS 019 482

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TITLE Joint Comments of Action for Children's Television, et al. in the Matter of Policies and Rules Concerning Children's Television Programming, Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations (MM Docket No. 90-570 and MM Docket No. 83-670) before the Federal Communications Commission (Washington, District of Columbia, January 30, 1991).
INSTITUTION Federal Communications Commission, Washington, D.C.
PUB DATE 30 Jan 91
NOTE 62p.; Footnotes of photocopy occasionally smeared.
PUB TYPE Viewpoints (Opinion/Position Papers, Essays, etc.) (120)

EDRS PRICE MF01/PC03 Plus Postage.
DESCRIPTORS *Agency Role; *Business Responsibility; *Childrens Television; *Compliance (Legal); Law Enforcement; Legal Responsibility; *Programing (Broadcast); Social Responsibility; *Television Commercials; Toys
IDENTIFIERS *Child Protection; Federal Communications Commission; Program Length Commercials; Public Interest

ABSTRACT

The joint comments of 12 organizations concerned about the current state of children's television programming are presented in this paper. The commentors' requests for action, which are specified in detail, are divided among the following legislative provisions: (1) the Federal Communications Commission (FCC) should make clear that for purposes of the Children's Television Act, children are defined as persons 12 years of age and under; (2) broadcasters are legally required to demonstrate that they have complied with the statutory obligation to present educational and informational programming; (3) the Commission is legally required to limit all commercial matter in order to protect the unique child audience; and (4) the FCC is legally required under the Communications Act and the Children's Television Act to hold broadcast licensees to the highest standard of responsible advertising practices. The Children's Television Act was passed in order to protect the nation's children from the excesses of commercialism and to nurture their minds through programming which not only entertains, but also educates and informs. In implementing the Act, the FCC must ensure that the medium of television lives up to its potential to serve children. Appendices provide a partial list of toys that have been turned into television shows since the 1982-1983 season, a list of program-length commercials, advertisements addressed to children, and the affidavit of Peggy Charren, President, Action for Children's Television, detailing her complaint concerning television advertising. (RH)

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Policies and Rules Concerning Children's Television Programming	)	MM Docket No. 90-570
	)	MM Docket No. 83-670
Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations.	)	

JOINT COMMENTS of ACTION FOR CHILDREN'S TELEVISION, et al.

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January 30, 1991

PS 019482

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Ascertainment Requirements, and	)	
Program Log Requirements for	)	
Commercial Television Stations.	)	

JOINT COMMENTS of ACTION FOR CHILDREN'S TELEVISION, et al.

Introduction and Summary of Requested Action:

Action for Children's Television, the American Academy of Child and Adolescent Psychiatry, the American Public Health Association, the Association for Childhood Education International, the Center for Science in the Public Interest, the Consumer Federation of America, the Consumers Union of U.S., Inc., the National Association for the Education of Young Children, the National Association of Elementary School Principals, the National Association of Secondary School Principals, the National Consumers League, the National PTA, and the Office of Communication of the United Church of Christ, (herein "Joint Commentors" or "Commentors"), hereby submit the following comments in response to the above-captioned Notice of Proposed Rule Making, FCC #90-373, released Nov. 30, 1990 (herein "Notice") by the Federal Communications Commission (herein "FCC" or "Commission").

As an initial matter, the joint commentors urge the Commission to find that the appropriate definition of children, whether on the

issue of the statutorily-mandated commercialization limits on children's television programming or for purposes of the obligation to present educational and informational programming for children,[1] should be children twelve years old and under. Such a definition is consistent with the legislative history and statutory purposes of the Children's Television Act, in accordance with past FCC practice, and significantly furthers the educational interests of America's underserved children.

With respect to the programming requirements applicable to commercial broadcast licensees, the FCC should clarify that "programming specifically designed to serve the educational and informational needs of children,"[2] must include programming which is both designed and produced for the child audience and which is age-specific. Joint commentors further contend that in order to promote the educational goals of the Children's Television Act and reduce administrative intrusion into the programming judgments of broadcast licensees, the FCC must define "educational and informational" programming as non-fiction programming, analogous to the non-fiction classification of library books and parallel to the non-entertainment category in the adult broadcasting area. Of

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[1] The Children's Television Act of 1990, Public Law No. 101-437, October 1990 [herein Children's Television Act] imposed requirements on the level of commercialization on broadcast and cable television; required the FCC to consider at renewal the extent commercial broadcasters have served the educational and informational (programming) needs of children; and directed the Commission to complete its "program length commercial" proceeding in MM Docket 93-670. Notice at par.1.

[2] Childrens Television Act, supra, at Sec. 103(b).

course, such programs can be in an entertaining format (and indeed should be if they are to capture the attention of children). The use of such a definition not only truly will meet the information needs of the child audience, but advances regulatory certainty for the Commission and broadcasters alike.

With respect to enforcement of the programming requirements, joint commentors believe that commercial broadcast licensees should have maximum discretion as to the overall mix of educational and informational programming serving the child audience (that is, the relative percentage of programming designed and broadcast for pre-school versus primary or elementary school ages) but that the Commission should promulgate percentage processing guidelines establishing that at least five percent of a broadcaster's programming in the relevant daypart (7 a.m. to 9 p.m.) be devoted to such programming. The FCC should require that each commercial broadcast licensee maintain records of all educational and informational programming for children including the time, date and duration of broadcast, as well as a description of the programming including the subject matter, ages served by the program, and how such programming contributes to informing and educating children. Joint commentors urge that upon application for renewal, the Commission designate a representative composite week consisting of specific days during the period of license and each broadcast licensee shall supply the FCC with the records of the educational and informational programming broadcast for the child audience during such time period. If a television broadcast licensee is

unable to demonstrate compliance with the five percent processing guideline or if such programming presented otherwise fails to serve the child audience as required by the Children's Television Act, the application for renewal should be brought to the attention of the full Commission.

Joint commentors additionally assert that for purposes of the Children's Televisicn Act and with respect to its proceeding commenced in MM Docket 83-670, the Commission should adopt a definition of "commercial matter" which includes not only matter which is "purely commercial" (that is, material within the commonly understood interpretation of "commercial matter,"[3]) but also material within the ambit of section 317 for purposes of sponsorship identification and other matter which impermissibly places commercial interests over the public interest in serving children, as previously defined by the FCC.[4] Such a definition includes situations where there is "disproportionate" and "undue attention" given to products in a program and where promotional matter is incorporated into a program, even if the program also has some independent entertainment value.[5]

With respect to the statutory limits on commercial matter, joint commentors assert that the FCC must require that broadcasters

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[3] See Notice at par.3 and fn. 10.

[4] See Children's Television Report and Policy Statement, 50 FCC 2d 1, 17-18 (1974) [herein "1974 Report"].

[5] See National Association for Better Broadcasting v. FCC, 830 F.2d 270, 276-77 (D.C. Cir. 1987)

and the cable industry (with the cable operators as the focal point) maintain logs of commercial matter aired on children's television programming so that the FCC can adequately determine and enforce compliance with the law. Broadcast licensees should additionally be required to certify at the time of renewal of their television license that they have complied with the statutory limits and to list all instances where they have failed to so comply. Further, in order to reduce the administrative burden without sacrificing compliance, the FCC should randomly audit five percent of commercial broadcast licensees rather than requiring every licensee to send the children's advertising logs to the Commission at renewal. Finally, the FCC should require that cable operators certify annually that they have complied with the commercialization limits for all channels cablecasting children's programming over which they can exercise control and may incur civil and criminal liability under the Cable Act (excluding public, educational, governmental and leased access).

Finally, the Commission must ensure that when it comes to children's programming, broadcast licensees do not flagrantly violate the public interest standard in this most important area. Thus, with regard to the pending proceeding regarding "program-length commercials," joint commentors assert that the FCC should retain and enforce its longstanding definition of program length commercials. It is firmly established that the marketplace does not function to halt commercial abuses when it comes to children and therefore, the FCC must act to prevent the expolitiation of

children in this regard. In order to attain some degree of regulatory certainty in defining "program length commercials," the FCC should establish a rebuttable presumption that if there is less than a two year time span between the introduction of the television program and the toy or the toy and the television program, it is prima facie evidence that the program was designed as a program length commercial and therefore is impermissible in the child context.

Joint commentors stress in this connection that the FCC is required under existing law and Commission policies (banning host-selling and requiring separation of program content and advertising) to prohibit the intermixture of commercial matter with program content for child audience regardless of the length of the program and that no announcement to the child audience regarding sponsorship can ever cure the deception involved in the intermixture of program and advertising material. Moreover, in order to halt a disturbing trend in children's television advertising, joint commentors request that the FCC make clear that the use of a program personality to promote toys or other products at any time within the same time segment as the show is aired (the four hour morning or afternoon time blocks) is impermissible host-selling and contrary to the public interest.

I. THE FCC SHOULD MAKE CLEAR THAT FOR PURPOSES OF THE CHILDREN'S TELEVISION ACT, CHILDREN ARE YOUTHS AGED TWELVE AND UNDER.

In its Notice, the Commission seeks comment on how to define "children's programming" for purposes of the commercialization

limits[6] and how to define "children" when the Commission is considering whether broadcast licensees have served the educational and informational needs of children.[7] Joint petitioners assert that the FCC should uniformly define "children" as the "child audience twelve years old and under"[8] for all purposes of the Children's Television Act. Not only does this definition comport with the commonly accepted interpretation[9], but it is consistent with longstanding Commission practice and it will best fulfill the Congressional goals of serving the "special needs of children."[10]

During virtually the entire period that the Commission has been focussing on the "special obligation to serve children"[11] imposed upon broadcast licensees under the Communications Act, it has defined children to include those youngsters twelve years old and under. Thus, in its 1974 Report, the FCC spoke of pre-school (ages two to five) and school-aged children (encompassing both primary and elementary school aged children ages six to twelve).[12] In implementing the policies of the 1974 Report, the Commission

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[6] Notice at par.2.

[7] Notice at par. 7.

[8] Notice at par.7, fn. 24.

[9] Webster's New Twentieth Century Dictionary of the English Language, Unabridged, 2d Ed. defines "Child" as "A boy or girl in the period before puberty." Id. at 313

[10] Children's Television Act, Sec.101(2),(4),(5).

[11] 1974 Report, supra, at 5.

[12] 1974 Report, supra, at 7.

amended its license renewal form (prior Form 303) so that it could monitor broadcaster compliance with the obligation to serve the unique child audience.[13] The FCC stated that "children's programs are defined as 'Programs designed for children: Programs originally produced and broadcast primarily for a child audience 12 years old and under.'"[14] In its comprehensive Task Force Report, the Commission consistently referred to children as the age group between two and twelve.[15] Indeed, when the FCC revisited the issue just five years ago, it again defined the obligation of broadcasters in terms of the duty to serve the child audience ages two through twelve.[16] In fact, as the Commission has itself noted, this definition has been used even when promulgating regulations in areas other than children's programming.[17]

While the Commission notes that another portion of the legislation defines "educational programming for children" as

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[13] Memorandum Opinion and Order, Docket 19142, 53 FCC 2d 161 (1975); Memorandum Opinion and Order, Docket 19142, 58 FCC 2d 1169 (1975).

[14] Memorandum Opinion and Order, Docket 19142, supra, 58 FCC 2d at 1169, cited in Children's Television Task Force Report, Vol.1, at 12, n. 18.

[15] See e.g., Task Force Report, supra, Vol.1 at 32, n.48, 76; Vol.II at 8

[16] Children's Television and Advertising Practices, 96 FCC 2d 634, 646-47 (1984), aff'd. sub nom. Action for Children's Television v. FCC, 756 F.2d 899 (D.C.Cir. 1985) The Commission there specifically rejected including teenagers in its definition of children stating that "[T]hose factors that warrant some special concern for the child audience...appear to decrease with age." Id. at n.33.

[17] Notice at n.24 citing 47 CFR Sec.73.658(k).

programming for those "16 years of age or younger,"[18], it correctly states that this provision relates to financial assistance for public telecommunications facilities which have traditionally defined children more broadly.[19] In fact, the definition of children as ages twelve and under is one which the broadcast community itself has developed and adhered to[20] and urged upon the Commission repeatedly as the appropriate category in other areas since it has always been the industry and agency standard.[21] It is for this reason that in discussing the viewing habits of "children," the Senate Committee on Energy and Commerce cited a study which investigated households with children under twelve.[22]

Such a definition not only is consistent with industry and

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[18] Notice at par.7, citing "Establishment of a National Endowment," Sec. 394 (i)(1), 47 U.S.C. Sec. 394 (i)(1).

[19] Notice at n.23.

[20] See "Turow Study" cited in Task Force Report, Vol. II at 8. Such a definition is also used by broadcast ratings services which define the child audience as ages two through twelve. See e.g., Weekly Viewing Activity for Women, Men, Teens and Children, 1990 Report on Television, Nielsen Media Research at 8, which groups children as ages 2 to 5 and 6 to 11.

[21] See Brief of Petitioners in Action for Children's Television v. FCC, Case No. 88-1916, filed Nov. 5, 1990, (D.C. Cir.) at 43-45 (urging that the FCC must use ages 2-12 as the relevant age group for purposes of promoting the government's interest in aiding parents to monitor exposure to "indecent" programming). See also ACT v. FCC, 852 F.2d 1332,1342 (D.C. Cir. 1988), quoting 122 Cong. Rec. 32,367, n.119 (Sept. 29, 1976); ("age 12 was selected since it is the upper limit for children's programming in the industry and at the Commission").

[22] Report of the Senate Committee on Commerce, Science and Transportation on S.1991, Children's Television Act of 1989, Rep. No. 101-227, 101st Cong., 1st Sess., at 7.

Commission interpretation and practice throughout its regulatory history in this area, but it significantly furthers Congressional goals in this area. The Commission has explained that children under the age of twelve are still in the process of developing intellectually, unlike older youths who are not as impressionable.[23] Similarly, while there may of course be benefits in offering educational programming for the teenage audience, the FCC has found that young children particularly benefit from educational and informational programming and that such programming has a very positive impact on their development.[24] The legislative history makes clear that Congress was particularly concerned with the group of youngsters ages two through twelve.

Thus, Congress explicitly singled out these "young and growing minds"[25] as those which will benefit from educational programming. Likewise, it has been recognized by Congress that, especially with respect to the younger ages, "[T]elevision has the ability to influence significantly our children's development."[26] When elaborating on the requirement to provide programming which is

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[23] Memorandum Opinion and Order in Dkt. 19142, FCC #75-1021, Sept. 29, 1975 at Par.5, fn.2.

[24] Notice of Proposed Rule Making in Dkt. 19142, FCC #79-851, Dec. 1979, at Par. 22; Children's Television and Advertising Practices, 96 FCC 2d 634, 674 n. 68 (1984), aff'd. sub nom. ACT v. FCC 756 F.2d 889 (D.C. Cir. 1985).

[25] Statement of Rep. Richardson, Oct. 1, 1990, 136 Cong. Rec. at H.8540.

[26] Statement of Sen. Hollings, July 19, 1990, 136 Cong. Rec. at S. 10122.

"specifically designed for children," Senator Wirth stated that "Children differ tremendously from adults in their thinking and reasoning capacities"[27] since "[y]oung children possess a more limited ability to comprehend programming...."[28]

Most significantly, in stating the purposes of the legislation, the Senate Report explicitly states the obligation upon broadcast licensees is to provide "programming specifically designed to meet the educational and informational needs of pre-school and school age children...."[29] The basis for this requirement is "the overwhelming evidence that such programming has the most impact on children's development."[30] Clearly the focus of the legislation is upon the developing young minds which have the most to gain by exposure to educational and informational programming during their formative years. Given the long standing definition of children as age twelve and under, the FCC cannot change its policy in this regard without some sort of rational explanation, which is clearly lacking here.[31] On this basis, the

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[27] Statement of Sen. Wirth, 136 Cong. Rec. July 19, 1990 at S.10123.

[28] Id. at S.10126.

[29] Senate Report, supra, at 1. See also Report of the House Committee on Energy and Commerce, Rep. No. 101-385, 101st Cong., 1st Sess. at 17. [Herein House Report].

[30] Senate Report, supra, at 23.

[31] See Motor Vehicles Manufacturers Ass'n. v. State Farm Mutual Automobile Ins. Co., 463 U.S. 28, 43 (1983); Greater Boston Television Corp. v. FCC, 444 F.2d 841, 851-852 (1970), cert. denied, 403 U.S. 923 (1971).

FCC should clarify that for all purposes of this legislation, "children" include those younsters ages twelve and under.

II. BROADCASTERS ARE LEGALLY REQUIRED TO DEMONSTRATE THEY HAVE COMPLIED WITH THE STATUTORY OBLIGATION TO PRESENT EDUCATIONAL AND INFORMATIONAL PROGRAMMING.

A. Broadcast Licensees are Statutorily Required to Keep Records of All Educational and Informational Programming Broadcast for the Child Audience and To Send Such Records to the Commission at Renewal.

In its Notice, the FCC recognizes that the legislation requires broadcasters to keep records concerning the children's programming they provide. Notice at par.9. The FCC inquires, however, whether, "in light of the administrative complexity involved in processing each broadcaster's records of children's programming at renewal time, ...whether submission of such records with a renewal application is indeed mandated by the Act." Notice at par.10. The Commission then inquires whether it may "permit a broadcaster...to certify that it was in compliance with our rules governing programming to serve the 'educational and informational needs of children'." Id. Petitioners find such a suggestion unbelievable in light of the clear Congressional directives mandating that broadcast licensees must affirmatively demonstrate what they have done to serve children and assert that as a matter of law, the FCC must require broadcast licensees to send records of children's programming to the Commission at renewal.

There is overwhelming evidence that Congress intended that broadcasters compile records of their efforts to serve children with educational and informational programming and to have the

Commission consider this evidence in determining whether a licensee has served the public interest. Both the House and the Senate clearly stated that

> Broadcasters, however, must send their children's television lists contained in the public files to the FCC at the time the FCC is considering their licenses of renewal. The Committee recognizes that this last requirement distinguishes this material from all other community issue-oriented programming. That is the Committee's explicit intent.[32]

It is difficult to imagine a stronger or clearer statement of Congressional intent regarding the statutory obligation imposed under the law. There is not the slightest evidence that Congress was concerned with administrative burdens and the Commission has not pointed to any such concern. In fact, there is explicit recognition that "While this may be a special provision, it is meant to improve programming to children, who unquestionably are a special audience with distinct programming needs."[33] It is clear that Congress intended that the Commission do more than merely include another question on the postcard it requires at renewal!

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[32] See Senate Report, supra, at 23-24; House Report, supra, at 18.

[33] See Statement of Rep. Lent, 136 Cong. Rec. Oct. 1, 1990 at H. 8541. See also Statement of Sen. Inouye. "What Congress is saying, in S.1992, is that broadcasters must focus on this critically important area of public service to children throughout its license term, and at the time of renewal, must submit a showing to the FCC that it has reasonably met this bedrock duty. Congress is singling out this rea for special focus by both the broadcaster and the FCC." July 19, 1990, 136 Cong. Rec. S.10121.

As to the form that such records should take, the FCC recognizes that broadcasters are accorded some flexibility. Notice at par. 9. While petitioners acknowledge that broadcast licensees are not required to adhere to any particular form, so that they may either keep such records with the quarterly issues/programs lists or separately,[34] there must be sufficient information available so as to allow the Commission and the public to adequately evaluate the sufficiency of service to the child audience. As the Court of Appeals has recognized in this area, the success of broad flexibility and broadcaster discretion depends on "the extent to which the Commission and the public monitor the level of actual performance."[35] The Commission states that the sole limitation is that such records provide a description of the programming presented designed to serve the educational and informational needs of children, the time, date, and duration of the programming. Notice at pars.9, 10. We assert that in order to permit meaningful evaluation of the licensee's efforts, such records must include the subject matter (e.g., current events, science, history, etc.) of the program and additionally describe how such programming serves the educational and informational as well as the ages served by the programming. Moreover, the licensee must be required to specify the amount of programming aired for each age group (pre-school, primary and elementary school ages) so

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[34] See Senate Report, supra, at 23.

[35] ACT v. FCC, 564 F.2d 458, 481 (D.C. Cir. 1977).

as to ensure the information is easily available. Without such a requirement, it will be virtually impossible for the FCC and the public to discern the extent to which a broadcaster has complied with the statutory obligation to provide "programming specifically designed" to serve the needs of children.[36]

B. In Order to Promote Administrative Certainty, The FCC Should Rely Upon a Composite Week and Percentage Processing Guidelines In order to Evaluate Licensee Performance.

Joint commentors believe that in the interests of minimizing administrative burdens and in reducing the regulatory uncertainty involved in the evaluation of broadcasters' programming efforts, the public interest would be best served by the adoption of a composite week structure. Not only would a composite week reduce the administrative complexity involved in processing each broadcaster's records at renewal time -- a problem which clearly concerns the Commission[37]-- it would more accurately indicate the efforts being made by each broadcaster.

Under such a requirement, the Comission should designate at the time of renewal a "composite week" consisting of specific days from each year of the five year license period, just as it formerly did with respect to other public interest programming categories (e.g., non-entertainment, local). And just as the Commission

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[36] Children's Television Act of 1990, Sec. 103(a)(2). See infra at Section II. C.

[37] See Notice at par.10.

formerly required in the broadcast renewal application,[38] the broadcast licensee would need only submit its records of educational and informational children's programming aired on those days. The Commission could also comport with its past practice of asking the licensee if the programming fairly and adequately reflects the programming efforts made by the broadcast licensee and allow the submission of additional information so as to permit the fair and accurate portrayal of the efforts made to serve children.[39]

A composite week requirement would likewise encourage broadcast licensees to program educational and informational fare for children throughout the license period rather than clustering it between ratings sweeps periods or on specific days. Since the licensee does not know in advance which days will be chosen, it will seek to air programming throughout each week and throughout the year. In this regard, we note that both Congress and the Commission have expressed concern about the "ghettoizing" of children's programming.[40] In short, the adoption of the composite week requirement utilizes a structure that promotes and encourages responsible service to children and the FCC should therefore so proceed.

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[38] See prior Form 303, Section IV, Statement of TV Programming Service."

[39] See prior Form 303, Section IV, Question 8A.

[40] See 1974 Report, 50 FCC 2d at 8; Senate Report, supra, at 8.

Joint commentors additionally urge the FCC to adopt percentage processing guidelines in order to more objectively evaluate broadcast license renewal applications and reduce the administrative burden. While Joint Commentors recognize that the legislation does not intend that a quantification standard govern the renewal determination,[41] we contend that the adoption of a processing guideline can best enable the FCC to fulfill its statutory responsibilities.[42] Moreover, while quantity of programming may not be the sole criteria the FCC will use to evaluate the sufficiency of broadcaster efforts, there is an "irreducible minimum amount of broadcasting minutes" of children's programming which must be presented in order to fulfill the public trustee obligations imposed under the Children's Television Act of 1990.[43]

In this regard, joint commentors urge that the Commission adopt a percentage processing guideline which would require action

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41 Senate Report, supra, at 23; House Report at 17. Joint commentors agree that with respect to the programming mix for children (i.e., how much programming should serve the pre-school age group versus the elementary or school age groups), the licensee should have "the greatest possible flexibility." Remarks of Sen. Inouye, July 19, 1990, 136 Cong. Rec. at S.10121. As we have noted, however, there must be some overall minimum below which a licensee cannot be said to have fulfilled its public trustee duty to our children.

42 In fact, in considering options for children's television, the FCC itself has noted the benefits of using a processing guideline in avaluating licensee performance. See Memorandum Opinion and Order in Dkt. 19142, FCC #75-851, Dec. 1979, at par.45.

43 Office of Communication of the United Church of Christ v. FCC, 707 F.2d 1413, 1433 (D.C. Cir. 1983).

by the Commission in the non-comparative renewal in the event that less than five percent of a broadcaster's programming was educational and informational programming for children.[44] Based upon the broadcasting hours of the majority of stations, such a requirement would translate into less than one hour per day of educational fare. Given that children watch on average of four hours of television per day,[45] it is not an unreasonable requirement to ask that such a small portion be "the video equivalent of textbooks."[46] Moreover, the programming would have to be presented between the hours of 7 a.m. and 9 p.m. -- the period when the bulk of the relevant age group watches television.[47] Such a processing guideline is consistent with the guidelines that the Commission maintained in the adult area where the Commission acted in the event less than five percent of a

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[44] Joint commentors stress that these figures should be clearly labelled as minimums rather than an acceptable level of programming. In any case, the Commission will of course be required to adopt higher standards for those applicants involved in a comparative renewal. See Central Florida Enterprises v. FCC, 683 F.2d 503, 507 (D.C.Cir. 1983).

[45] Weekly Viewing Activity for Women, Men, Teens and Children, 1990 Report on Television, Nielsen Media Research at 8.

[46] Statement of Rep. Markey, Oct. 1, 1990, 136 Cong. Rec. at H.8538. Congress has further recognized that "[v]irtually every developed country in the world devotes more resources than we do on educational television." Statement of Sen. Wirth, Sept. 24, 1990, 136 Cong. Rec. S.13555. A requirement of a minimum five percent of programming designed to serve children is the least that U.S. broadcasters can do to enhance the development of our Nation's most precious resource.

[47] Weekly Viewing Activity for Women, Men, Teens and Children, 1990 Report on Television, Nielsen Media Research at 8.

licensee's programming was "informational."[48] While such a guideline would not automatically create a presumption that a broadcast licensee has failed to meet its obligation to serve children, it would enable the FCC to ferret out those licensee's that are only minimally serving the child audience.[49]

Significantly, the adoption of a percentage processing guideline also goes far in providing an administratively manageable solution for processing renewal applications. Without guidelines, it will be an enormous task to review the hundreds of applications received each year and the renewals staff will not have any predictable basis for focussing on certain applications or singling out some for Commission attention. Likewise, in this sensitive programming area, with its First Amendment tensions, the Commission would reduce agency intrusion by promulgating objective standards by which to judge broadcast licensee efforts at renewal. Certainly it is the poorest of policy to proceed with no guidelines.[50]

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[48] See former 47 CFR Sec. 0.281 (a)(8)(i).

[49] It may well be that such licensees could demonstrate that they have otherwise served the child audience e.g., by funding children's programs on public broadcasting or publishing study guides for use in conjuction with the programming they do air. Clearly such efforts are contemplated under the Act and perfectly permissible. See Section 103 (b). If a licensee could not meet the guidelines, however, the FCC would be required to conduct further inquiry as to efforts made to serve the educational and informational needs of children. For, while non-broadcast efforts are valid, there still remains a basic obligation for each broadcaster to present programming specifically designed for the child audience. See Senate Report, at 23.

[50] By so proceeding, the Commission will once again prove the truth of the 1973 statement of Chairman Dean Burch:

> If I were to pose the question, what are the FCC's renewal policies and what are the

Broadcast licensees will be in the dark as to what is expected of them. The public will be in the dark as to how broadcasters are serving their children's needs. Worst of all, the FCC, which is charged with ensuring that broadcasters are fulfilling their legal obligations, will be in the dark as to how it should be making the basic finding in this regard. For these reasons, we urge the Commission to adopt percentage processing guidelines so it can judge licensee compliance with the law.

C. The FCC Should Define "Educational and Informational Programming" as Non-Fiction, Age-Specific Programming.

Joint commentors additionally urge that the FCC adopt a definition of "educational and informational programming" which states that such programming must be "nonfiction" -- that is, programming which instead of portraying "imaginary characters and events,"[51] depicts real characters and events such as historical,

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> controlling guidelines, everyone in this room would be on equal footing. You couldn't tell me. I couldn't tell you -- and no one else at the Commission could do any better (least of all the long-suffering renewals staff).

Address to the International Radio and Television Society, Sept. 14, 1973, FCC Memo 06608, at 3.

[51] See definition of "fiction" at Webster's New Twentieth Century Dictionary of the English Language, Unabridged, 2d Ed., p.680. See also definition of "fiction" in Funk & Wagnalls Standard Dictionary, 1983, at 287: "Prose works in narrative form, the characters and incidents of which are wholly or partly imaginary." "Nonfiction" is there described as "Prose literature other than fiction, as historical works, biographies, etc." Id. at 536.

biographical and scientific works.[52] Such a "nonfiction" definition would substantially further administrative and broadcaster certainty because unlike the previous definitions,[53] there are no gray areas as to whether a particular program falls within the scope of the definition. When the librarian receives a children's book, he clearly can and does make a decision as to where to place it, whether on the fiction or nonfiction shelf. Similarly, when a broadcaster or the FCC evaluates a program presented for the child audience, they can clearly discern whether a particular children's program is educational and informational ("nonfiction") or not.

Significantly, rather than limiting the scope of material that broadcast licensees can present to fulfill their obligation, the definition is expansive and should pose no impediment to "broadcasters [who] are genuinely committed to [their] task..."[54] The adoption of this definition also allows for the fact that educational and informational programming for children, unlike the analogous "nonentertainment" category for adults,[55] must be

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[52] We do not suggest by any means that this is the extent of "nonfiction" programs which a broadcaster could present. Clearly, the list is exhaustive including programs on geography, technology, medicine, anthropology, social sciences, music, art, etc. One only need consider the diverse material available on the "nonfiction" shelves of the library to appreciate the broad scope of the classification.

[53] Notice at n.30.

[54] 1974 Report, 50 FCC 2d at 19.

[55] See FCC v. WNCN Listeners Guild, 450 U.S. 582, 602 (1981).

entertaining if it is to hold their interest.[56]

Moreover, the "nonfiction" definition addresses the concerns of some members of Congress who feared that the educational and informational programming required by the law would simply be presentations of existing toy-based cartoons.[57] For instance, the depiction of the Smurfs discovering America in 1492 is clearly not within the proposed definition and certainly cannot be said to assist children in learning history or about the world around them. On the other hand, the nonfiction depiction of the event -- Christopher Columbus sailing to the New World -- clearly informs and educates children. If the goal is to educate and inform children, they must be educated about the real world in which they live, not the imaginary fantasy world of television entertainment. Of course, we are not saying that such material must be presented in a dry fashion, for to serve children it must capture their attention and should be entertaining. Thus, for the young child, an animated presentation is clearly acceptable while older children may benefit more from human characters. These are licensee programming decisions that, when made in good faith, will not

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[56] 1974 Report, supra, 50 FCC 2d at 6-7. See also Remarks of Sen. Wirth: "Programming that is provided to fulfill this obligation can certainly be designed to be entertaining to children. Indeed, one might hope this would be the case in order to maximize the attractiveness of such content to child viewres, thereby increasing its reach and impact upon America's youth." July 19, 1990, 136 Cong. Rec. S.10126.

[57] Id. at 136 Cong. Rec. S.10127.

undermine the educational and informational nature of the show.[58] Most importantly, programming falling within this definition unquestionably educates and informs children in basic ways. Just as a child who seeks to learn more about our environment will turn to the nonfiction section of the library, there can be the television program equivalent available to teach him the lesson. This is the goal of the legislation and the FCC should act so as to maximize the chances it will be fulfilled.[59]

We further note that such educational and informational programming must be age-specific, taking into account the special charcteristics of various segments of the child population...."[60] Congress has taken note of the fact that "the record in the FCC's children's proceedings and the record in the Senate are replete with evidence that programming aimed at specific ages is far more effective at teaching or informing children."[61] Age specificity is critical in designing educational and informational programming

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[58] The FCC must also make clear that the inclusion of a "moral" on an entertainment program (such as "crime doesn't pay" or "be nice to your sister") will not make such a program educational. Indeed, to attempt to pass off entertainment programs as information by including such morals is a clear misrepresentation to the FCC and a flagrant pattern of doing such should subject the licensee to loss of license. See FCC v. WOKO, Inc., 329 U.S. 223 (1946).

[59] We note that such efforts as "Not Just News," the production of which is directly attributable to the Children's Television Act, is precisely within this "nonfiction" definition. Electronic Media, Jan. 14, 1991 at 3.

[60] Senate Report, supra, at 23.

[61] Id. at 23.

for children because, as the FCC has noted, "pre-school children generally cannot read and otherwise differ markedly from older children in their level of intellectual development."[62]

Moreover, although the legislation acknowledges that general audience programming can have an informative impact upon some older children to a certain extent, it alone "is not sufficient to meet the special needs of children."[63] For, "no matter how worthwhile and educational a general purpose adult program may be for the older child, standing alone, it often does not meet the needs of younger children."[64] To meet their statutory obligations, broadcast licensees must also offer programming which is specifically designed according to the varying learning needs and capabilities of the different segments of the child audience.[65] This is only a matter of common sense. A program about math or reading that serves to educate and inform a four year old will be inappropriate for a ten year old, who is much more developed intellectually and academically. As Senator Wirth stated, "This requirement is unequivocal."[66] To require any less would make the

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[62] 1974 Report, supra, 50 FCC 2d at 7.

[63] Id. See also Statement of Sen. Inouye, July 19, 1990, 136 Cong. Rec. 10121, 10122.

[64] Statement of Sen. Wirth, July 19, 1990, 136 Cong. Rec. at S.10127.

[65] Statement of Sen. Wirth, July 19, 1990, 136Cong. Rec. S.10126.

[66] Remarks of Sen. Wirth, Sept. 24, 1990, 136 Cong. Rec. at S.13555.

essential requirement of providing educational and informational programming meaningless.

III. THE COMMISSION IS LEGALLY REQUIRED TO LIMIT ALL "COMMERCIAL MATTER" IN ORDER TO PROTECT THE UNIQUE CHILD AUDIENCE.

A. "Commercial Matter" Encompasses All Matter Within the Traditional Definition, Matter Falling Within Section 317, and Any Matter Giving Undue Attention to Products and Promotional Material.

The basis for regulation of the commercial advertising practices area for children is clear: "[K]ids are different...."[67] For decades, the FCC stated that children are "far more trusting of and vulnerable to commercial 'pitches' than are adults" and that young children have trouble distinguishing between program and commercial matter.[68] Congress has recognized that scientific evidence establishes that children are "uniquely susceptible" to the persuasive messages contained in television advertising and thus, particular care must be taken when advertising to the child audience.[69] Indeed, the overwhelming concern expressed by Congress over the level of commercialization on children's television was expressly due to this recognition.[70]

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[67] Action for Children's Television v. FCC, 821 F.2d 741, 747 (D.C. Cir. 1987).

[68] 1974 Report, supra, at 11; Final Staff Report, Children's Advertising, TRR #215-60, Federal Trade Commission, March 31, 1981.

[69] See House Report, supra, at 6. Similarly, the FCC has recognized that even older children are less able to withstand advertising appeals than adults. 1974 Report, supra, at 11-12.

[70] See e.g., Remarks of Rep. Lent:

> Television is a persuasive medium. What comes out of the tube has a great impact on all who watch. That impact is measurably greater on children, who often lack the capability to

It is for these reasons that the FCC has in effect its policies prohibiting "host-selling," "lead-ins and lead-outs" and requires a strict separation between the program and the commercial message.[71] Given these findings, it would be illogical and arbitrary to narrowly limit the definition of "commercial matter" in the child context and the Commission has never so acted. In short, due to the special nature of the child audience -- their youth, inexperience, immaturity and vulnerability -- "[a]ny practice which is unfair or deceptive when directed to children would clearly be inconsistent with a broadcaster's duty to operate in the 'public interest' and may be prohibited...."[72]

Joint commentors further assert that as a matter of law, the definition of "commercial matter" must be defined broadly so as to include material that is not only purely commercial (in addition to the definition set forth by the Commission[73]). Such a result is compelled under NABB v. FCC, which held that material could

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appreciate that they are being sold as well as entertained.

Oct. 1, 1990, 136 Cong. Rec. H.8541. See also Statement of Sen. Wirth, July 19, 1990, 136 Cong. Rec. S.10124;. Remarks of Sen. Inouye, Id. at S.10127.

[71] 1974 Report, supra, 50 FCC 2d at 15-16, 88. See also Memorandum Opinion and Order, 104 FCC 2d 358, 371 n.41 (1986). Joint commentors also assert that the FCC must make clear that host selling is impermissible whenever the host or program personality pitches a toy or product within the same time segment as the program airs. See Section IV. C infra.

[72] 1974 Report, supra, 50 FCC 2d at 14. The standard would of course be higher when considering the young child, who is not even able to distinguish between program and advertising content.

[73] Notice at par.3, n.10.

constitute advertising even though it "is entertaining and something less than wholly commercial."[74] Thus, any material where there is "disproportionate" and "undue attention" given to products in a program can constitute "commercial matter."[75] Significantly, the application of Section 317 of the Communications Act[76] when combined with the Commission's policies unique to the children's area has an impact which the FCC must take into account.[77] Consequently, the FCC is clearly bound at a minimum by the definition of "commercial matter" required under that section.[78]

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[74] NABB v. FCC, supra, 830 F.2d at 277, n.55.

[75] NABB v. FCC, supra, 830 F.2d at 276-277.

[76] 47 U.S.C. Sec 317 (198-).

[77] See NABB v. FCC, supra, 830 F.2d at 277, n.55, which found that the FCC's separations policy and limitations on broadcast advertising to children "were clearly promulgated as special, additional measures,...intended to supplement, rather than replace, the sponsorship identification rule...." (Emphasis added.)

[78] Any other result would be absurd. For, the purpose of section 317 is "that commercial material ... is identified sufficiently to avoid deception." In re Complaint of Action for Children's Television, FCC #85-180, Mimeo 35680, May 1, 1985 at par.15. Yet, as both the FCC and Congress have recognized, children are unable to understand and withstand the persuasive intent of commercial matter, and must be protected to an even greater extent to avoid deception. See n.69 and accompanying text supra. Certainly, material which is deceptive to adults will be deceptive to the trusting child.

Similarly, it is also for this reason that joint commentors contend that announcements under section 317 cannot ever cure the deception involved in interweaving programming and commercial matter as such a practice is inherently deceptive. See Comments of Action for Children's Television, et al. in MM Dkt. 83-670, filed Feb. 18, 1988 at 15-16. To the extent any of the joint commentors herein ever expressed the view that sponsorship announcements were applicable to commercial matter presented to the child audience, it is expressly disavowed herein.

Similarly, consistent with its longstanding policies, the FCC should include in its definition of "commercial matter" any material which places undue emphasis on products or promotional material, even if such matter does not fall strictly within section 317.[79] The Commission has stressed that in this area, "the conscientious broadcaster should hold himself to the highest standard of responsible practices."[80] The creeping commercialism that previous vigilant Commissions were able to prevent was a basic concern of Congress in enacting the legislation and the FCC should heed this intent by implementing the "spirit" as well as the "letter" of the law. The FCC has recognized in the past that certain matter can "promote products in such a way that they may constitute advertising."[81] When it so acted, broadcasters and advertisers responded by limiting commercialism. If the Commission truly seeks to protect our children -- our most precious resource -- it cannot not turn its back to reality by ignoring the very real commercial intent and impact beyond a narrow definition.

B. The FCC Should Require Broadcasters and Cable Operators to Certify that they have Complied with the

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[79] In this regard, we note the FCC's reluctance to find that certain toy-based programs fall within section 317, where there is some consideration, albeit lopsided. See In re KCOP, 4 FCC rcd 4988 (1989), aff'd. sub nom. NABB v. FCC, 902 F.2d 1009, (D.C. Cir. 1990) (per curiam). While such practices may not come within section 317, they clearly violate the FCC's policy prohibiting the interweaving of program and commercial matter. See discussion of "program-length commercials" and "product-based programming" infra at Section IV. A.

[80] 1974 Report, supra, 50 FCC 2d at 18.

[81] 1974 Report, supra, at 17.

Statutory Limits on Commercial Matter.

In order to enforce the statutory commercialization limits of 10.5 minutes per hour on weekends and 12 minutes per hour during the week, the Commission should require that both broadcasters and cable operators certify to the Commission that they have complied with such limits. The Commission must additionally require that broadcasters and cable operators maintain records of advertising on children's programming sufficient to demonstrate compliance with such limits.

1. For broadcast licensees, in addition to requiring certification, the FCC should randomly audit 5% of all stations.

As proposed in the Notice, joint commentors agree that broadcast licensees should be able to demonstrate compliance with the statutory commercialization limits by certifying to the FCC in their applications for renewal that they have met the limits and by listing all such cases where they have deviated from the limits. This process is consistent with the prior approach to enforcing commercialization limits under Form 303.[82] Moreover, it will minimize the administrative burden on the Commission and thus serve the interests of regulatory economy.

In this connection, we assert that the Commission must count commercial minutes in the most logical and commonsense method possible: by the clock hour as it has always done. While the Commission suggests in its notice that it proposes to use a

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[82] See Form 303, Section IV, "Past Commercial Practices."

"program segment" approach, Notice at fn.12, joint commentors believe that such a system is confusing, ignores the reality of program practices and would open the door to abuse. If, as the Commission hypothesizes, a program aired from 9:45 a.m. to 10:45 a.m. on a Saturday morning (which is clearly an unusual practice for programming such time slots[83]), the licensee would be responsible for airing no more than 10.5 minutes of advertising for the hour between 9:00 a.m. and 10:00 a.m. and 10.5 minutes of advertising for the hour between 10:00 a.m. and 11:00 a.m. While the end result may be the same for a conscientious licensee, it avoids confusion and assures that the less than responsible broadcaster adheres to the spirit and the letter of the law.

Similarly, joint commentors stress that when a half hour of children's programming airs as an "island" within a block of adult programming, the FCC must limit the advertising on such program to half of the required amount (5.25 minutes on weekends and 6 minutes during the week). To do otherwise would permit broadcasters to skirt the limits which Congress clearly stated were essential to the fulfillment of the public trustee obligation imposed upon broadcast licensees.[84]

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[83] See e.g., TV Guide, Boston, Jan. 12-18, 1991, Saturday, Jan. 12, 1991, at 45-64. For instance, children's television programs airing during Saturday, Jan. 12, 1991 in the Boston metropolitan area begin either on the hour or the half hour. This is standard industry practice.

[84] In fact, this is precisely what is contemplated by some programmers and advertisers. See Broadcasting, "Syndicators, Stations Ponder Children's Bill Limits," Dec. 31, 1990 at 48 (suggesting "stacking" extra minutes in new children's programs). Given the fact that many childrens program contain only 22 to 24

While we do not believe that it is essential for all broadcast licensees to submit commercial advertising logs to the Commission at the time of renewal, there clearly must be a record-keeping requirement imposed upon licensees so that the Commission can enforce the requirements of the Children's Television Act. Since broadcasters already maintain such records for their advertisers (who generally insist upon such records so as to verify when their commercials appear), it is clearly not imposing a burden to require that such records be available to the Commission and the public for purposes of enforcing the commercialization limits.[85]

Moreover, in order to ensure that broadcasters are complying with the time limits, the FCC should follow its past practice of auditing 5% of all licensees on a random basis. Such an audit would entail the review of all commercial advertising logs for children's programming.[86] While the majority of broadcasters will

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minutes of program time per half hour, there is certainly a great incentive to engage in creative "counting" methods of commercial time for children, thus undermining the law. Id. See also, Broadcasting,"TV's Premature Strategy for Children's TV" Oct. 15, 1990 at 70.

[85] See e.g., The Wall Street Journal, Dec. 13, 1982 at A29; Broadcasting, Aug. 15, 1983 at 27-28.

[86] See Radio Broadcast Services: Revision of Applications for Renewal of License of Commercial AM, FM and Television Licensees, 49 R.R. 2d (P & F) 740, 749 (1981). While this audit was eliminated in Television Deregulation, MM Docket 83-670, 56 R.R. 2d (P & F) 1005, 1031 (1984), it was based upon the notion that "the video marketplace will provide sufficient incentives [to prevent abuse]." Id. at 1032. See also, Memorandum Opinion and Order in MM Docket 83-670, [FCC #86-223] 98 FCC 2d 1076, 1102 [par.22] (1986) where the FCC stated that it believes the marketplace will protect children. That position was explicitly rejected by the U.S. Court of Appeals in Action for Children's Television v. FCC, 821 F.2d 741, 747 (D.C. Cir. 1987). It is now

undoubtedly comply with the commercialization limits, the audit process will facilitate the Commission in ferreting out those few licensees who are disserving the public interest by engaging in excess advertising to children. Indeed, given the lack of any burden upon the broadcast licensee to maintain the logs, it is only sound policy to enable the Commission to monitor compliance through such audits.

2. The Commission should require cable operators to annually certify compliance with the commercial time limits on all channels over which they can exercise editorial control.

The limits on overcommercialization are explicitly applicable to cable operators.[87] As the legislative history makes clear, "the same rationale for restricting commercial matter during children's programming on over-the-air television applies to such programming on cable television...."[88] Of course, this is only a matter of commonsense. Children certainly make no conceptual distinction between the video programs they see on television via cable as opposed to over-the-air broadcasts. Congress made a clear finding that children are uniquely vulnerable to overcommercialization, do not have the sophistication to appreciate the persuasive intent of advertising, and that the marketplace will not protect against commercial excess in this area whether on cable or broadcast

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clear that in the children's advertising area, the marketplace does not work to prevent abuse. See House Report, supra, at 6; Senate Report, supra, at 9.

[87] Children's Television Act at Sec. 102(d).

[88] Senate Report, supra, at 10.

television.[89]

As a result, cable operators are now responsible for complying with the statutory limits on all channels over which they maintain editorial control, rather than simply on any local origination channels they may program, as suggested by the Commission in its Notice.[90] Under the Cable Communications Policy Act of 1984, cable operators maintain editorial control over and are clearly liable for the content of all channels they carry except for public, educational, governmental and leased access channels.[91] Indeed, cable operators have consistently likened themselves to newspapers and magazines, noting their editorial function as to the programming they choose to carry.[92] In fact, contrary to the suggestion that neither the Act nor the legislative history intended to hold cable operators liable for programming on "cable networks," the Act explicitly makes the limits applicable to cable operators and the legislative history specifically refers to at

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[89] See Statement of Sen. Hollings, July 19, 1990, 136 Cong. Rec. at S.10124; Statement of Sen. Danforth, July 19, 1990, 136 Cong. Rec. at S.10125; Statement of Sen. Wirth, Sept. 24, 1990, 136 Cong. Rec. at S.13555.

[90] Notice at par.4

[91] See Cable Act Sec.639, "Criminal and Civil Liability," 47 U.S.C. Sec. 558 (1988). Similarly, it is only on these channels that the cable operator is barred from exercising editorial control. Cable Act, Secs. 611(e), 612(c)(2), 47 U.S.C. Secs. 531(e), 532(c)(2).

[92] See e.g., Shapiro, Kurland & Mercurio. Cablespeech: The Case for First Amendment Protection, Law & Business Inc., Harcourt Brace Jovanovich, N.Y. 1983.

least nine cable networks which carry children's programming.[93]

Joint commentors contend, however, that under the Act, the Commission does not have jurisdiction over the particular cable network programmers. Instead, the FCC is legally required to ensure that all cable operators comply with the commercial time limits on all programming they present for children. To the extent a particular cable operator believes that it is unaware of how many minutes of advertising are being aired on a cable network it chooses to place on its system, it can always require compliance with the limits in its contracts with the specific cable networks. Moreover, in order to enable the cable operator to demonstrate compliance to the FCC, the cable operator must insist that such cable networks maintain advertising logs and make such logs available to the cable operator so as to demonstrate compliance.[94] For, under both the Children's Television Act and the Cable Act, the cable operator must accept ultimate liability for violations in this regard.[95]

In order to monitor compliance, the FCC should require that all cable operators certify annually to the Commission that they have met the commercial time limits on all programming over which

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[93] These include Arts and Entertainment, CNBC, The Discovery Channel, Nickelodeon, The Family Channel, Lifetime, Superstation TBS, TNT and the USA Network. Senate Report, supra, at 10.

[94] Such logs are kept in any event as a matter of sound business practice. See note 85 supra.

[95] See Cable Act, Sec. 639, 47 U.S.C. Sec 558.

they maintain editorial control.[96] Just as with broadcast licensees, cable operators should be required to list all instances where violations have occurred. Such certification could be done at the same time as cable operators file their Form 395A to certify compliance with EEO requirements applicable to cable systems. Additionally, just as is the case with cable EEO reviews, the Commission should be required to investigate all public complaints of violations, with the burden upon the cable operator of proving compliance.

IV. THE FCC IS LEGALLY REQUIRED UNDER THE COMMUNICATIONS ACT AND THE CHILDREN'S TELEVISION ACT TO HOLD BROADCAST LICENSEES TO THE HIGHEST STANDARD OF RESPONSIBLE ADVERTISING PRACTICES.

Under the Communications Act and the Children's Television Act, the FCC has a statutory obligation to ensure that broadcast licensees hold themselves to "the highest standard of responsible practices."[97] Children are a particularly vulnerable segment of the audience and for this reason, Congress and the Commission have long expressed concern about "any practice that contributes to the commercial exploitation of children."[98] As the Commission aptly put it:

> Any practice which is unfair or deceptive when directed

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[96] Joint commentors concur that the Act appears to exempt cable operators from liability for violations ocurring on retransmitted broadcast channels, just as cable operators are not responsible for the EEO violations of retransmitted broadcast stations. Notice at par.4, n.15. See also, Statement of Sen Inouye, July 19, 1990, 136 Cong. Rec. S.10122.

[97] 1974 Report, supra, 50 FCC 2d at 18, par. 55.

[98] Statement of Rep. Markey, Oct. 1, 1990, 136 Cong. Rec. at H.8537.

> to children would clearly be inconsistent with a broadcaster's duty to operate in the public interest....[99]

Clearly, under the statutory public trustee scheme, broadcasters have a duty not to subordinate the public interest to private commercial interests.[100]

A. The Commission Has Always Found Program Length Commercials Directed to the Child Audience to be Contrary to the Public Interest.

Originally, the FCC on an overall basis had a lonstanding concern about program length commercials and programming which interweaves commercial and program matter.[101] As the Commission has stated:

> Program-length commercials raise three basic problems. Of primary concern is that such programs may exhibit a pattern of subordinating programming in the public interest to programming in the interest of salability. In addition, a program length commercial is almost always inconsistent with the licensee's representations to the Commission as to the maximum amount of commercial matter that will be broadcast in a given clock hour. Finally, there are usually logging violations involved....[102]

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[99] 1974 Report, supra, at par.46.

[100] Id. at 9; Children's Television Report, 96 FCC 2d 634, 655-56 (1984), aff'd, ACT v. FCC, 756 F.2d 899 (D.C. Cir. 1985).

[101] See Program Length Commercials, 44 FCC 2d 985 (1974); Program Length Commercials, 39 FCC 2d 1062 (1973); Memorandum Opinion and Order on Auction Programs as Program Length Commercials, 69 FCC 2d 682 (1978). See also, In re KCOP Television, 52 FCC 2d 495 (1975); In re WUAB, Inc., 33 FCC 2d 748 (1972); In the Matter of American Broadcasting Companies, Inc., 23 FCC 2d 132 (1970); In re Topper Corporation, 21 FCC 2d 148 (1969).

[102] Program Length Commercials, 39 FCC 2d 1062 (1973).

As to children's programming, such concerns continue to be of paramount importance today, just as they were in the 1970s. While the Comission has deregulated the area of advertising as to adults,[103] it is absolutely clear that the marketplace does not function as to children and that special safeguards are necessary in order to protect children from overcommercialization. It is for this reason that the U.S. Court of Appeals held that the FCC could not "cavalierly revoke its special policy for youngsters"[104] and that the Children's Television Act was passed into law.[105] While the Commission may no longer be concerned with the proliferation of program length commercials about subjects such as chinchilla ranching which are geared to the adult audience,[106] its concerns about program length commercials for the child audience are fully valid today.

Incredibly, the FCC now expresses doubt as to whether 'program length commercials' "logically could be defined so as not to inhibit such programs [as Sesame Street and Disney]."[107] Yet, the FCC has a long-established definition of program length commercials which proved effective and workable for years so as to prevent the subordination of program interests in the interests of salability.

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[103] Television Deregulation, 98 FCC 2d 1076, 1105 (1984), reconsideration, 104 FCC 2d 358 (1986).

[104] ACT v. FCC, 821 F.2d 741, 747 (D.C. Cir. 1987)

[105] See Children's Television Act, Sec.101(4).

[106] See e.g., Rush Broadcasting Co., 42 FCC 2d 483 (1973).

[107] Notice at par.14.

The Commission found in 1974 that when a program is "so interwoven with, and in essence auxiliary to, the sponsor's advertising...to the point that the entire program constitutes a single commercial promotion for the sponsor's products or services," it would be deemed a commercial.[108] When the Commission diligently applied this definition in the 1970s, it completely halted the practice of developing children's television programs around toys in order to promote products.[109] In fact, between 1974, when the Commission expressed concern about promoting products within the body of a children's television show and the practice of product "tie-ins,"[110] and 1979, when the FCC completed its Children's Television Task Force Report, the practice was virtually eliminated.[111] Broadcast licensees, toy manufacturers, advertisers and the Commission all knew exactly what was prohibited and did not produce or air such "commercial" programs.

It was only when the FCC erroneously reversed its position without any explanation that such programs began to flourish. In 1983, there were 13 such toy-based programs but by 1988, that

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[108] Program Length Commercials, 44 FCC 2d 985, 986 (1974).

[109] See In the Matter of American Broadcasting Companies, Inc., 23 FCC 2d 132 (1970) and In re Topper Corporation, 21 FCC 2d 148 (1969) where the Commission easily found that the program was developed with its promotional value in mind as well as its entertainment value and impermissibly subordinated the public interest to commercial interests. See also "Comments of Action for Children's Television, et al." in MM Dkt. 83-670, at 12-21, incorporated herein by reference.

[110] 1974 Report, supra, 50 FCC 2d at 17.

[111] Task Force Report, Vol. II, at 60.

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number had risen to seventy.[112] The practice of creating programs in order to sell toys continues today. Attached hereto as Appendix A is a partial listing of toys that have been turned into television shows since the 1982-83 season along with typical television listings for two major U.S. cities. These illustrate how heavily broadcasters are relying upon such toy based programs, especially in the most heavily-watched Monday through Friday before and after school dayparts. In fact, in 1983, licensed merchandise generated $26.7 billions in retail sales.[113] By 1989 (the last year for which figures are available), sales of licensed products had grown to $64.6 billions.[114] Manufacturers are clearly taking advantage of the enormous "advertising" exposure these half hour commercials offer.[115]

The commercial nature of such programs is widely acknowledged by programmers and advertisers. Indeed, it is the great success in boosting toy sales that makes these programs so important and desirable to toy manufacturers. One noted children's television producer, Cy Schneider, even blatantly refers to these programs as

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[112] See B. Watkins, "Improving Educational and Informational Programming for Children: When the Marketplace Fails," Vol.V, Yale Law and Policy Review 345, 363-366 (1987).

[113] Cy Schneider, Children's Television, The Art, the Business and How It Works, NTC Business Books, 1987 at 114.

[114] The Licensing Letter, 1989 Retail Sales Figures.

[115] See e.g., "Are Children Being Brainwashed to Buy Toys?" Newsday Magazine, Feb. 17, 1985 at 13, statement of Lois Hanrahan, Marketing Director, Tonka Toys: "We believe that in order to keep the category exciting, in order to keep the kids buying Gobots, we need to do a TV series."

"half hour commercials" and bluntly states that "New children's characters are no longer originated by television or movies. Instead they are originated by toy companies as products, then turned into television shows."[116] In extolling the virtues of half hour commercials as sales vehicles, he continues:

> Television can do what movies cannot by virtue of its enormous reach and frequency of exposure.... These ideas communicated in television function in every way like product commercials.[117]

Moreover, there is an understanding that the more products (toys) depicted during the show, the better the advertising effect so that even inanimate products are being turned into "personalities." Explains Schneider:

> [M]any programming properties are now being designed more for their merchandising potential than for their pure entertainment value, and are starting to depart from the single character concept. Many of these exploitative shows now contain numerous characters for the obvious reason that this creates multiple purchases by the consumer rather than a single purchase of a single popular character. In addition, these shows include many more gadgets, gimmicks, hardware and vehicles--the stuff of which kids products are made. And while many of the most famous characters of all time have been nonhuman, we are beginning to see many more programs and motion pivtures in which humans are mixed with non-humans such as animals, aliens, and

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[116] See Schneider, Children's Television, supra, at 111. See also Broadcasting, Interview with Dick Robertson, Pres., Warner Bros. Domestic Television Distribution, Jan. 14, 1991 at 70.

[117] Id. at 120-121. In fact, licensors are now aware that to market toys and other products most effectively, they should be promoted through a half hour commercial which also runs as a syndicated weekday strip rather than a Saturday morning network program. Id. at 121-123.

> *robots. These characters translate into toy products more easily than do human characters.*[118]

Thus, in some of the most recent program length commercials such as "Captain N: The Game Master" and "Super Mario Brothers III," there is a character called "Gameboy" depicting the approximately $100 video game toy as an animated personality. Clearly, there is serious subversion of the programming decisionmaking process. Permitting this trend to proliferate is wholly inconsistent with the public interest duty to put profits second and children first.[119]

Clearly, these 'program-length commercials' pose the same problems that the previous FCCs identified in the 1970s -- programming decisions are impermissibly skewed and commercial matter is being presented far in excess of the commercial time limits of the Children's Television Act. As set forth above in Section III. A., as a matter of law, the definition of "commercial matter" encompasses more than material which is wholly commercial. Rather, any matter in which there is "disproportionate" or "undue attention" given to a product within a program can constitute "commercial matter."[120] It was this definition that led previous

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[118] Id. at 125.

[119] 1974 Report, 50 FCC 2d at 19.

[120] See NABB v. FCC, supra, 830 F.2d at 276-77. The Court found that the FCC had erred in its finding that the "He-Man and the Masters of the Universe" program did not contain commercial matter as long as it "possessed significant entertainment value for child audiences." Id. at n.22.

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Commissions to find that the "Hot Wheels" program constituted commercial matter since the producer designed the format for its "promotional value as well as its entertainment value...." [121] And, this is precisely the situation that exists in scores of children's programs today. As Action for Children's Television stated in its earlier comments in this proceeding, there is substantial evidence that toy companies are significantly involved in program production in the interests of ensuring that the products are promoted to the greatest extent possible.[122]

Moreover, joint commentors assert that not only does the inclusion of such commercial matter within the program violate the commercial time limits of the Children's Television Act, but it is also completely inconsistent with existing FCC policies as to children's television. As the Commission has repeatedly stated, its policy requiring a strict separation between program material and advertising remains in full force and effect today.[123] Yet, by definition, these program length commercials clearly violate this policy by making it virtually impossible to distinguish program from commercial content. The FCC has repeatedly held that

> Any matter which constitutes advertising should be confined to identifiable commercial

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121 In re Complaint of Topper Corp., 28 FCC 2d 148, 149 (1969).

122 See Reply Comments of Action for Children's Television et al. in MM Docket 83-670, filed April 4, 1988, at 4-11, Appendix, which are incorporated herein by reference.

123 Television Deregulation Reconsideration, supra, 104 FCC 2d at 371, n.41. The Commission there stated that its policy prohibiting host selling also remains valid.

> segments which are set off in some clear manner from the entertainment portion of the program.[124]

While adults may be able to understand the persuasive intent of a program length commercial (the interweaving of commercial matter with program content), especially if they are given an announcement informing them of the commercial nature of a particular program, a child cannot do so. Due to their youth and inexperience, children are "less able to understand and withstand advertising appeals than adults."[125] To kids, the interweaving of commercial and program material is inherently deceptive and no announcement will ever cure the deception. This is the basis for the separations policy and the reason that such toy-based programs are per se improper for children.[126]

B. The FCC Should Enforce Its Prior Definition of Program Length Commercials.

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[124] 1974 Report, supra, 50 FCC 2d at 18.

[125] 1974 Report, supra, 50 FCC 2d at 11.

[126] Similarly, it is for this reason that program length commercials of any duration are impermissible for the child audience since it is fundamentally improper to interweave program and commercial matter for the child audience. See also Program Length Commercials, supra, 44 FCC 2d at 1000-1001 (holding that even if a program length commercial does not exceed commercial time limits, it is inimical to the public interest). The Commission is clearly ignoring its own basic policy in the children's area to suggest otherwise (Notice at n.50) even assuming arguendo that its new proferred definition of a program length commercial is adopted (a program associated with a product in which commercials for that product are aired, Notice at par.15). Surely the FCC is not now suggesting it is proper to interweave advertisements with the program as long as it is only for 10.5 or 12 minutes!

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As stated, the FCC has long maintained a definition of program length commercials that was workable and effective. The FCC applied its definition considering all the facts of particular cases and deferred to the good faith determinations of licensees.[127] Thus, when the facts indicated that the purported non-commercial segment "has achieved a substantial identity" with the advertising (if any) the program was considered a program length commercial.[128] Likewise, if a licensee permits a program "to be shaped by the commercial interests," the program must be considered commercial.[129] While the Commission now expresses doubt that such factual determinations can be made, we point out that for years, the Commission effectively and consistently made such distictions. It was using this very definition that the FCC found that "Hot Wheels" was designed to promote toys but that programs such as the Mickey Mouse Club were permissible.[130]

We believe that through just such reasonable and diligent application of the traditional definition of program length commercials, the FCC could act to stop the spread of product-based programs which subordinate the public interest to commercial

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[127] Program Length Commercials, supra, 44 FCC 2d at 986-987.

[128] Id. at 989.

[129] Id. at 992.

[130] In fact, the Commission has always examined the facts of particular cases brought to its attention so that it could waive its rules in such unusual circumstances. See e.g., In re NBC, 29 FCC 2d 67 (1971) (exception for well-known, longstanding children's program with "significant program values").

interests. If, however, the Commission believes that it needs a practical administratively workable method for making such determinations, joint commentors assert that it can look at the sequence and timing of the toy or other product and the program. For, when programs are developed primarily as commercial vehicles to sell products, the product is developed just prior to or in conjunction with the program rather than the program being first produced as a successful children's entertainment program capable of standing on its own. Similarly, if a toy has legitimate play value, it will be able to endure in the competitive toy market without daily half hour programs promoting the toy. Thus, the FCC should establish a rebuttable presumption that if there is less than a two year time span between the introduction of the television program and the toy or the toy and the television program, it is prima facie evidence that the program was designed as a program length commercial and is therefore impermissible in the child context. In this way, the agency will be able to deal with the flagrant abuses and halt the trend of using kids' programs as marketing devices while still allowing for legitimate programs which may have toys associated with them.

In the Notice, however, the FCC rejects its long standing definition and sets forth a new proposed definition of "program length commercials": "a program associated with a product in which commercials for that product are aired."[131] In fact, such practice

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[131] Notice at par.15.

is already improper under its existing separations policy and the ban on host-selling.[132] Further, the proposed definition completely fails to address the practice of pitching products within the body of the program -- which is, afterall, what its "program length commercial" definition has always sought to do.[133] Neither does the Commission offer even the slightest reason for abandoning the prior definition or the policy which prohibits elevating private interests over the public interests. While the Commission may of course eliminate these policies, it must offer a reasoned explanation.[134] As the U.S. Court of Appeals found:

> For almost 15 years, the FCC's regulation of children's television was founded on the premise that the television marketplace does not function adequately when children make up the audience....The Commission has offered neither facts nor analysis to the effect that its earlier concerns over market failure were overemphasized, misguided, outdated or just downright incorrect.[135]

In fact, the Commission continues to adhere to and enforce its separations and host-selling policies, clearly evidencing its

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[132] For instance, the Commission has found that the use of the "My Little Pony" character during commercial breaks in the "My Little Pony" program constituted host-selling and undermined the separation bewteen advertisement and program. Letter of Admonition to KCOP Television, Inc. (May 15, 1989).

[133] 1974 Report, supra, 50 FCC 2d at 17, par.53, and cases cited therein.

[134] See Motor Vehicles Manufacturers Ass'n. v. State Farm Mutual Automobile Ins. Co., 463 U.S. 28, 43 (1983); Greater Boston Television Corp. v. FCC, 444 F.2d 841, 851-852 (1970), cert. denied, 403 U.S. 923 (1971).

[135] ACT v. FCC, supra, 821 F.2d at 746 (footnote omitted).

concern over the unique sensitivity of children to advertising matter.[136] In such circumstances, eliminating its existing definition of program length commercials is arbitrary and capricious.[137]

C. The FCC Must Enforce its Ban on Host-Selling and Clarify that it Extends to Any Such Practice Within a Four Hour Time Segment.

The Commission's policy of barring the host or other program personality from pitching products to child viewers remains fully valid today.[138] One problem with host-selling is that it interweaves the program with the commercial, "exacerbating the difficulty children have distinguishing between the two."[139] In short, it is unfair and deceptive to a child to have their "trusted friend" selling them a product. While adults may know that Johnny Carson is not sending a personal message about the soup he pitches, kids cannot appreciate the persuasive intent of promotions coming from their favorite television friends.

Because this policy remains fully valid today, we expect that the Commission will continue to diligently apply it in order to protect our children from being "ripped off" by these unfair

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[136] See e.g., Letter to Action for Childrens Television dated Jan. 1991; Letter of Admonition to KCOP Television, Inc. (May 15, 1989); Letter of Admonition to WGNO Inc. (Feb. 7, 1990); Letter of Admonition to KTVU Inc. (July 21, 1989).

[137] ACT v. FCC, supra. 821 F.2d at 746.

[138] See 1974 Report, supra, 50 FCC 2d at 16; Television Deregulation, supra, 104 FCC 2d at 371, n.41; Letter to Action for Childrens Television, dated Jan. 4, 1991.

[139] 1974 Report, supra, 50 FCC 2d at 16.

practices. There is now a trend which clearly warrants a Commission investigation -- television hosts, usually popular children's actors, promote assorted video games and products through short spots during the course of the broadcasts.[140] These segments have been acknowledged by the program producers and advertisers as commercial pitches and clearly violate the FCC's host-selling policy. While some may contend that these spots are simply "reviews," we ask the FCC to consider the logical extension of this line of reasoning. Certainly a program host would not be permitted to "review" a toy company's new product line, including demonstrations and endorsements of the products. That would be blatant advertising. The current trend, however, is precisely the same and the FCC should act decisively now to put a halt to it.

In addition, there is a further trend in children's advertising that the Commission must address -- the use of program personalities to pitch products related to television shows during the same programming block as the show airs. See Appendix C, attached hereto. For instance, during the same time segment (whether the morning or afternoon programming block) as the "G.I. Joe" program airs, an advertisement will run using the G.I. Joe

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[140] For instance, one new program, "Gamepro," is advertised as "hosted by the enormously popular star of 'Fun House'. See Appendix B attached hereto. Action for Children's Television has additionally filed a "Petition for Public Notice and Investigation" elaborating on this trend on May 3, 1990. In response to that petition, the FCC decided to defer action in light of the present proceeding. Letter to Action for Children's Television, Jan. 4, 1991. We hereby incorporate by reference that petition into the present proceeding.

character (complete with the same animation, voice, details, etc.) to promote the related toys. This is extremely unfair and exploitive of child viewers. Certainly the FCC cannot say that it is harmful and deceptive to run the advertisement within the program but it is alright twenty or forty minutes later! To the child who is watching, the effect is the same. The character they just saw is exhorting them to buy the toy they just saw "in action."

Significantly, the FCC has expressed its concern over this practice. It found that public interest issues exist "when program personalities or characters deliver commercial messages on programs other than the ones in which they appear....This may be particularly important where the personality appears in a distinctive character costume or other efforts are made to emphasize his program role."[141] As noted, this is precisely the situation we increasingly face. Indeed, the promotional effect is deliberately heigtened by the practice of running the advertisements within the same programming block as the program. On this basis, the FCC should make clear that using program personalities to hawk products at any time during the same time block (proposed here as either the four hour morning or afternoon

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141 1974 Report, supra, 50 FCC 2d at 17, n.20. While the Commission expressed some limited tolerance for the use of children's program hosts in advertisements in stations which have limited budgets, this is completely irrelevant to the situation it is now faced with. In fact, the "hosts" and "personalities" of today are animated characters and are presented not because of limited program budgets but due to their persuasive effect.

segments) is a violation of its policy prohibiting host selling.

CONCLUSION

The Children's Television Act was passed in order to protect our nation's children from the excesses of commercialism and to nurture their minds through programming which not only entertains, but educates and informs. In implementing the Act, the FCC must ensure that the medium of television lives up to its potential to serve children. To paraphrase the Commission's own words, while a vigilant public can help to correct some of the more flagrant abuses, it "cannot create a sense of commitment to children where it does not already exist."[142] For this reason, we urge the FCC to act along the lines set forth above and truly commit itself to our children and our future.

Respectfully submitted,

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January 30, 1991

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142 1974 Report, supra, 50 FCC 2d at 19, par.59.

APPENDIX A

PARTIAL LISTING OF TOYS THAT HAVE BEEN TURNED INTO TV SHOWS SINCE THE 1982-1983 SEASON

AMERICAN GREETINGS
Strawberry Shortcake

BALLY MIDWAY TOY COMPANY
Ms. Pacman
Pacman
Pitfall

COLECO TOY COMPANY
Cabbage Patch Kids
Donkey Kong
Donkey Kong Jr.
Sectaurs
Sylvanian Families

HALLMARK
Mugga Bunch

HASBRO TOY COMPANY
The Charmkins
*Force III
G.I. Joe: A Real American Hero
Glo Friends
Inhumanoids
Jem
*Moon Dreamers
My Little Pony
The Transformers
*Visionaries
The Wuzzles
xC.O.P.S

IDEAL TOY COMPANY
The Kindles
Robo Force
Rubik the Amazing Cube

IMPULSE, INC. TOY COMPANY
* ** Saber Rider and the Star Sheriffs

KENNER TOY COMPANY
The Biskitts
Care Bears
Centurions
M.A.S.K.
Rose Petal Place
SilverHawks

LEWIS GALOOB TOY COMPANY
Golden Girl

LJN TOY COMPANY
*Bionic Six
The Blinkins
Photon
The Shirt Tales
Snuggles the Seal
ThunderCats
*TigerSharks
Voltron, Defender of the Universe

MATCHBOX TOY COMPANY
Robotech
Tranzor-Z
xRing Raiders

MATTEL TOY COMPANY
*BraveStarr
* ** Captain Power and the Soldiers of the Future
He-Man and the Masters of the Universe
Herself the Elf
Jayce and the Wheeled Warriors
Lady Lovely Locks & the Pixietails
Poochie
Popples
*My Pet Monster
Monchhichis
Rainbow Brite
She-Ra, Princess of Power

MILTON BRADLEY TOY COMPANY
Robotix

NINTENDO
xxCaptain N: The Game Master
xxThe Super Mario Brothers Super Show

PARKER BROTHERS TOY COMPANY
Frogger
Q*Bert

SANRIO
Hello Kitty

SELCHOW AND RIGHTER TOY COMPANY
Scrabble People

TOMY TOY COMPANY
The Get Along Gang
The Snorks
Sweet Sea

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* = New for Fall 1987
** = Interactive program
* ** = Interactive program beginning Fall 1987
x = New for Fall 1988
xx = New for Fall 1989

PARTIAL LISTING (CONTINUED)

TONKA TOY COMPANY
GoBots
*Mapletown
Pound Puppies
Rock Lords
*Sprial Zone
Star Fairies
*Supernaturals

TSR TOY COMPANY
Dungeons and Dragons

TYCO
xDino-Riders

WORLDS OF WONDER TOY COMPANY
Lazer Tag
Teddy Ruxpin

PROGRAM-LENGTH COMMERCIALS

(Listed in Boston TV Guide, Schedule for Week of November 3-9, 1990)

Day	Time	Program	Channel
Saturday	8:30	Captain N, Super Mario Brothers	4 and 10
Sunday	10:30	G.I. Joe	56
	11:00 AM	New Adventures of He-Man	56
Monday through Friday	6:00 AM	MASK	38
	6:30 AM	ThunderCats	38
	6:30 AM	Super Mario Brothers Super Show	64
	8:00 AM	New Adventures of He-Man	56
	8:00 AM	G.I. Joe	64
	3:30 PM	G.I. Joe	56
	4:00 PM	Super Mario Brothers Super Show	25 and 60

Stations

4 - WBZ, Boston (NBC)
10 - WJAR, Providence (NBC)
25 - WFXT, Boston (Fox)
38 - WSBK, Boston (Ind.)
56 - WLVI, Boston (Ind.)
60 - WGOT, Merrimack, NH (Ind.)
64 - WNAC, Providence, RI (Fox)

NOTE: Providence, RI listings are identical to Boston

PROGRAM-LENGTH COMMERCIALS

(Listed in Houston Chronicle - "TV Chroni-log," Week of November 11-17, 1990)

Day	Time	Program	Channel
Monday through Friday	6:00 AM	ThunderCats	26
	8:30 AM	Super Mario Brothers	26
	2:00 PM	ThunderCats	26
	3:00 PM	He-Man	26
Saturday	7:00 AM	Voltron	45
	7:30 AM	Captain N/Super Mario Bros. 3	2

Stations

2 - KPRC, Houston (NBC)
26 - KRIV, Houston (Fox)
45 - KXLN, Rosenberg (Spanish)

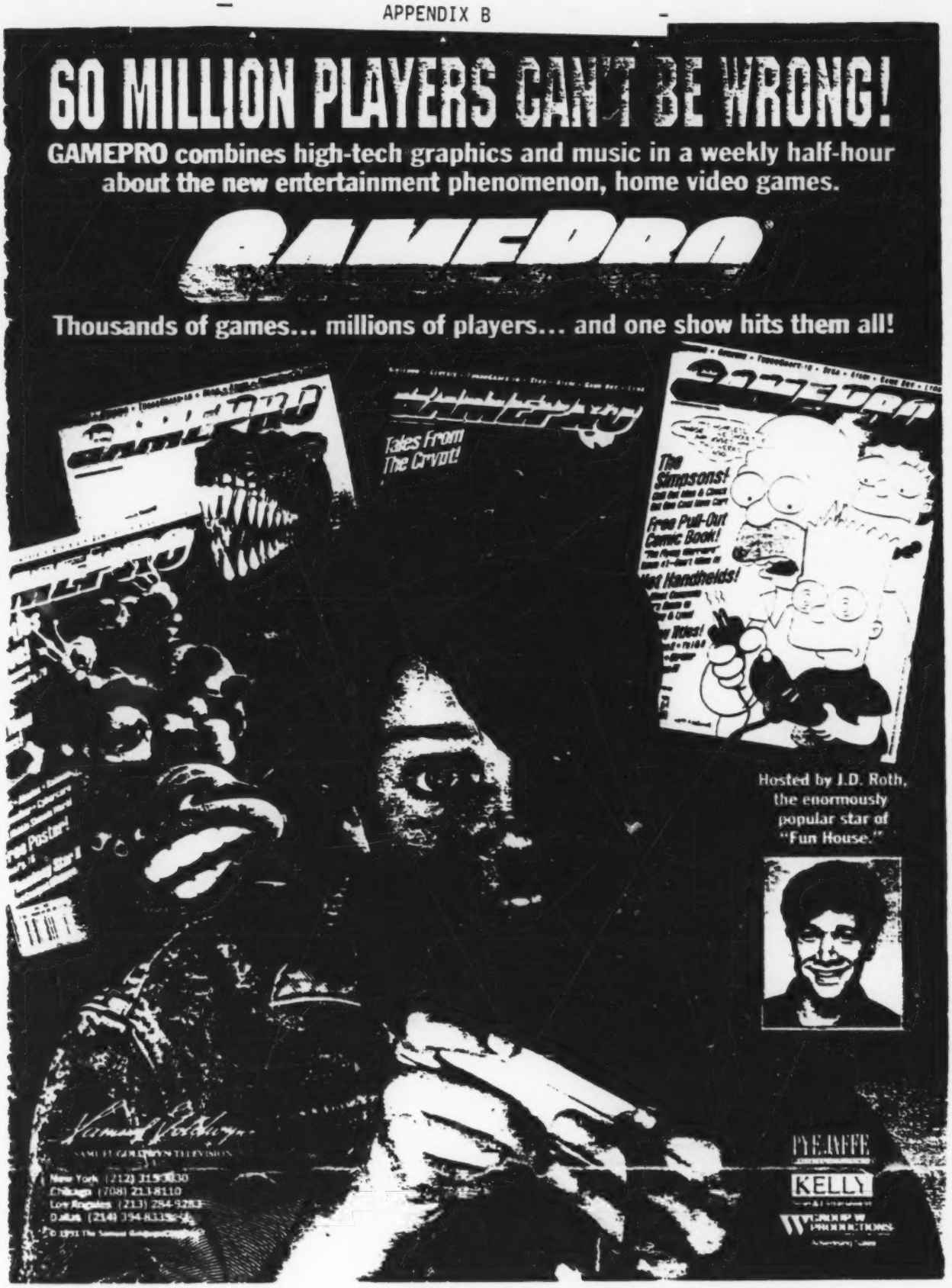
PROGRAM-LENGTH COMMERCIALS

(Listed in TV Guide, Washington, DC, Schedule Week of November 24-30, 1990)

Day	Time	Program	Channel
Saturday	9:00 AM	Super Mario Bros.	2,4,8,25
Monday through Friday	7:00 AM	G.I. Joe	20
	7:00 AM	He-Man	50
	8:00 AM	G.I. Joe	45
	3:30 PM	Super Mario Bros.	54
	4:00 PM	He-Man	54

Stations

2 - WMAR, Baltimore, MD (NBC)
4 - WRC, Washington, DC (NBC)
8 - WGAL, Lancaster, PA (NBC)
20 - WDCA, Washington, DC (Ind.)
25 - WHAG, Hagerstown, MD (NBC)
45 - WBFF, Baltimore, MD (Fox)
50 - WFTY, Washington, DC (Ind.)
54 - WNUV, Baltimore, MD (Ind.)


60 MILLION PLAYERS CAN'T BE WRONG!
GAMEPRO combines high-tech graphics and music in a weekly half-hour about the new entertainment phenomenon, home video games.
GAMEPRO
Thousands of games... millions of players... and one show hits them all!
Tales From The Crypt
The Simpsons!
Free Pull-Out Comic Book!
Hosted by J.D. Roth, the enormously popular star of "Fun House."
PYE-AFFE
KELLY

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GET THE VIDEO POWER™ EDGE FOR 1991.

Day by day. Week by week. Month by month. That's how **Video Power**™ is growing. It was bound to take time to build an audience for a show as unique as **Video Power.**™ But as our numbers show, the more kids see us the more kids love us. That's **The Video Power**™ **Edge.**

Johnny Arcade™, our video game whiz kid, has become America's favorite video gamer. Bags and bags of fan mail prove that Johnny's popularity is continuing to grow. And with ongoing time period upgrades, it will continue to grow into the second year. That's **The Video Power**™ **Edge!**

So get ready for a new season of Johnny Arcade™ and his world of video game news, previews, celebrity interviews and the hottest game tips anywhere.

THE FASTEST GROWING KIDS SHOW OF THE SEASON.

TOP 10 SYNDICATED SHOWS	K2-11 Rtg w/o 10/1/90	K2-11 Rtg Year-to-Date*	% Increase
VIDEO POWER	2.8	3.7	+32%
G.I. Joe	1.9	2.5	+32%
Alaka, Ramo & Roo	1.6	2.0	+25%
Jetsons	3.4	4.1	+21%
Gummi Bears	4.5	5.4	+20%
Muppet Babies	4.9	5.5	+12%
Merry Melodies	6.3	7.1	+13%
Duck Tales	3.3	3.7	+12%
Ahnn & The Chipmunks	9.2	9.1	-1%
Chip 'N Dale	5.7	5.4	-5%
Teenage Mutant Turtles	6.7	6.0	-10%
Jetsons	5.8	5.3	-9%
Tiny Toons Adv.	1.3	2.1	+62%
New Adv. of Batman	2.1		
Super Mario Bros.			

*Source: 10/29/90-11/18/90 NTI

TOP 10 VIDEO POWER STATIONS		K2-11 Rtg w/o 10/1/90	K2-11 Rtg Year-to-Date*	% INCREASE
MARKET	STATION			
New York	WWOR	1.1	1.3	
Los Angeles	KCOP	1.6	2.7	
Chicago	WPWR	2.0	2.2	
San Francisco	KTVU	1.3	1.6	
Detroit	WKBD	1.9	2.5	
Cleveland	WUAB	2.9	3.0	
Atlanta	WGNX	1.2	1.8	
St. Louis	KDNL	2.0	2.3	
Indianapolis	WTTV	3.7	2.8	
Milwaukee	WVTV	2.6	3.2	

*Source: NSI 10/29-11/23/90 vs. 10/1/90 (Cleveland Source: Arb)

COME SEE US AT NAPTE

NEW ORLEANS HILTON-
Bohbot Entertainment, Inc. Suite
TPE ON CONVENTION FLOOR BOOTH #1462

Bohbot Entertainment, Inc.

STATION SALES
Adrien Seixas
212-213-4700

ADVERTISER SALES
Harvey Gamm
212-750-9190

Acclaim

Bohbot Communications, Inc.

Affidavit

I, Peggy Charren, hereby declare, under penalty of perjury, that the following facts are true to the best of my knowledge, information and belief.

1. My name is Peggy Charren, and I am president of Action for Children's Television (ACT).
2. Action for Children's Television is a nonprofit child advocacy organization working to encourage diversity in children's TV, to discourage overcommercialization of children's television programming and to eliminate deceptive advertising aimed at young viewers.
3. I hereby declare that I have personally seen TV advertising directed to children which uses the animated program host or program performers (including identical animation, voices and music) in order to promote products to children, including products relating to the program in which they appear.
4. I hereby declare that I have personally seen such ads aired on programs adjacent to or within the same morning and afternoon programming blocks as the show in which the characters appear.
5. To the best of my knowledge, information and belief, this practice is increasingly pervasive throughout the TV industry, including networks, affiliates and independent stations.

Peggy Charren
President
Action for Children's Television